



Wisconsin State Senate

Testimony of Senator Jim Sullivan on Senate Bill 298
November 13th, 2007

Good afternoon everyone, and thank you for your attention to the very important matter of addressing foreclosure scam artists in the State of Wisconsin. I would also like to thank Representative Richards, the Milwaukee Metropolitan Fair Housing Council, and the Legal Aid Society of Milwaukee for their work on this issue, and I am pleased to see that the Committee will be hearing from them as well.

Senate Bill 298 protects homeowners against foreclosure scam artists by bringing a sharp focus to the practices used to take advantage of people who are already in tough financial situations. As Chair of the state Senate's Committee on Financial Institutions, it is my perspective that 99% of the financial industry in Wisconsin has already been appropriately regulated, and are serving consumers well. However there are areas, like the one in which these scam artists operate, that need to be brought in to the fold so to meet the same tough standards as the rest of the industry. To be sure, foreclosure reconveyances serve a purpose in our economy and this bill does not outlaw them. However, there needs to be common sense guidelines that fit in with other financial regulations, so that homeowners can be protected against deceptive practices that are in violation of the spirit of the law.

Foreclosures are up in the current economy, and that market trend has lead to a major growth in so called "foreclosure consultants" that go door to door, attempting to con unsuspecting homeowners out of their property. These people are a cancer on the financial and real estate sector. They are bad apples that have separated themselves from the industry because of their unscrupulous practices. This is an opportunity to shore up these unregulated sections of the industry that give good actors a bad name.

The bill establishes basic, common-sense standards to protect homeowners from unscrupulous and predatory mortgage lending practices:

- Senate bill 298 requires lenders to verify a borrower's ability to repay a loan, establishes a duty of agency, and prohibits "churning," which is refinancing without benefit to the borrower.
- The bill stops the scammer from returning the property to the homeowner or selling the property and not returning 82% of the value to the homeowner.
- It prohibits a scammer from acting as an advisor or consultant or in any other manner indicating that they are acting on behalf of the foreclosed homeowner.
- It prohibits a foreclosure consultant from making statements or engaging in behavior that is false, misleading, or deceptive.

We shouldn't defend these bad apples as people working within the free market. These scammers are deceptive, and their own training courses actually teach these practices as the legitimate way to do business. It is a system based on taking advantage of hard working people, and I encourage the whole financial sector to join with Representative Richards and myself in putting an end to these practices. Homeownership is still part of the American dream. This legislation ensures that scam artists do not turn that dream in to a nightmare. Thank you for your attention, and Rep. Richards and I will take questions after he is finished with his introductory comments.



STATE REPRESENTATIVE
JON RICHARDS

ASSISTANT MINORITY LEADER
WISCONSIN STATE ASSEMBLY

Homeowner Protection Act

SB 298

Tuesday, November 13, 2007

Senate Committee on Veterans and Military Affairs, Biotechnology and Financial
Institutions

Testimony of Representative Jon Richards

Thank you Senator Sullivan and members of the Senate Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions for not only providing me with an opportunity to testify on Senate Bill 298 but for promptly conducting a hearing on this matter. Given current trends it is likely that the problems this bill addresses will become more severe and numerous in the upcoming year. This bill address two practices that, when abused, are harming desperate people: foreclosure reconveyance and foreclosure consultants.

The recent downturn in the housing market combined with some new and creative ways of financing home purchases have revealed a deficiency in our consumer protection safety net. More and more homeowners are finding themselves on the wrong end of adjustable rate mortgages or other financing products with escalating interest rates. When this happens, family budgets get pushed to the breaking point and desperate homeowners begin looking for solutions.

Sometimes the help they're looking for comes from those who are not interested in helping but instead are only interested making matters worse. A common means of swindling people out of their homes is through a fraudulent reconveyance agreement – also known as “equity stripping”. What makes this difficult to address is that there are legitimate “home rescuers” who will employ a reconveyance mechanism as a way of helping people keep their homes. The reconveyance process, however, is prone to abuse and must be regulated to ensure that all parties thoroughly understand the agreement.

When conveyances are used legitimately they can prove helpful to the homeowner and profitable to the rescuer. This can be a win-win situation. When abused, they prove disastrous.

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HOME

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This is how a reconveyance can be used to scam someone out of their home. Imagine the owner of a \$250,000 home with \$150,000 of equity in it. The owner, due to imprudent financing or loss of job or medical bills, finds him or herself falling behind on mortgage payments and desperate for help. The owner is approached by someone, under the guise of help, who presents a scheme to allow the owner to keep the house while they get their finances in order. Part of this scheme is the temporary transfer of ownership in the home to the rescuer combined with a lease and buy back option.

What the victim doesn't know is that the rescuer has no intention of ever selling back the home. In fact, the rescuer often establishes lease payments that are just as onerous as the mortgage payments that got the victim in trouble in the first place. Once the victim misses a lease payment or violates some other technical provision in the agreement the rescuer evicts the victim and sells the property for a sizable gain.

It is the ultimate in kicking people while they're down and unconscionable by any measure.

To address this problem Senate Bill 298 proposes to:

1. Require lenders to verify a borrower's ability to repay a loan, establishes a duty of agency and prohibits "churning" or refinancing without benefit to the borrower.
2. Forbids negative amortization and requires a disclosure when monthly payment quotes do not include taxes and insurance.
3. Requires that 82% of the value of a home be returned to the homeowner as part of a reconveyance agreement.
4. Requires that any reconveyance agreement be by written contract and that the agreement can be cancelled by the homeowner within five days of signing the contract.

The bill also creates a regulatory environment for foreclosure consultants. As with reconveyances, there are many legitimate foreclosure consultants currently operating in Wisconsin. There are, however, people who market themselves as foreclosure consultants but their only goal is to charge excessive fees for filing simple paper work or, in some cases, for doing no work at all.

The victim in this case believes that his or her consultant fees are paying to keep the bill collectors and financial institutions at arms length while they work to fix their financial situation. What they have really bought is false hope. By the time they figure out that promised services were not rendered its too late.

To address this problem Senate Bill 298 proposes to:

1. Prohibit a foreclosure consultant from making statements or engaging in behavior that is false, misleading, or deceptive.
2. Prohibit a foreclosure consultant from acting as an advisor indicating that they are acting on behalf of the foreclosed homeowner.
3. Require that foreclosure consult contracts be in writing and that the homeowner has a right to cancel.

Homeownership is the American Dream but for some it has turned into a dream they would rather forget. There are those who may say that this should be left to the old adage of "buyer beware". Given the importance of homeownership in our society and the potential for complete financial ruin associated with these deceptive practices I believe that it is prudent to enact these common sense consumer protection reforms.

Thank you for seriously considering this proposal and thank you for your attention. I would be happy to respond to any questions.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

November 13, 2007

Senator Jim Sullivan
Chair
Senate Committee on Veterans and Military Affairs,
Biotechnology and Financial Institutions

Re: SB 298 – Regulating Foreclosure Reconveyances and Consultants

Dear Senator Sullivan:

Thank you for the opportunity to testify on SB 298. We support this legislation.

Mortgage foreclosure rescue scams, also referred to as equity stripping scams is one of the most insidious consumer frauds that we have come across in a very long time. It impacts not only individual homeowners, but neighborhoods, and communities. It also has an adverse impact on the many legitimate mortgage lenders we have in this state.

Like most consumer fraud, the motive is greed. Those engaged in perpetrating this fraud take advantage of desperate and unsophisticated homeowners who only want to stay in their homes under terms and conditions they can afford. They are not attempting to avoid paying what is legitimately due and owing on their home.

Those that perpetrate these schemes represent that they can not only save the consumer's home from foreclosure but can also make certain that the homeowner's future mortgage payments will be at a level that the consumer can afford. While the perpetrators of this fraud can often terminate the foreclosure action by paying the amount due to the mortgage lender, they do so on terms that usually end up not only in the loss of the home to the "rescuer", but also in stripping the consumer of all their equity in their homes.

Foreclosure rescue scams have existed for many years. However, the combination of increasing home values between 2000 and 2005 and the subsequent downturn in the housing market, the increase in sub-prime lending, and the increase in "boutique" loans that lead consumers to believe that they will be able to make their mortgage payments have made foreclosure rescue scams common.

The Mortgage Bankers Association recently disclosed that nearly 19 percent of all loans to less-creditworthy consumers, or 1.1 million mortgages, were either delinquent by more

Agriculture generates \$51.5 billion for Wisconsin

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • 608-224-5012 • Wisconsin.gov

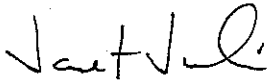
than 30 days or in foreclosure. That means that 1.1 million homeowners are subject to the predatory practices of the foreclosure rescue industry.

The money made by foreclosure rescue fraudsters is huge, thereby increasing the practice and the practitioners. The FBI estimates that mortgage fraud in general led to over \$1 billion in losses in 2005, up from \$429 million a year earlier. As the number of foreclosures increase, the numbers of homeowners and the amount of money loss will also increase.

Since we do not pretend to have a great deal of knowledge about this industry, we cannot comment on the specifics of this bill. However we do know that the bill is patterned after Minnesota's law and that law is considered to be successful in stemming the tide of this fraud.

We have raised some concerns about the enforcement provisions of Sec. 846.45 which is created by this legislation. We think that section is ambiguous and confusing, which makes enforcement very difficult. We have addressed these issues with the sponsor and are more than willing to craft language that effectuates the sponsor's intent while resolving the ambiguities.

Respectfully,



Janet Jenkins

Administrator

Division of Trade and Consumer Protection

Louise Kirk
8219 West Brentwood Avenue
Milwaukee, Wisconsin 53223

To Whom It May Concern:

We resided at this address 29 years. Our home was paid off in 19 years. With the illness of my husband lasting so long, we had to refinance the house. He had Open Heart Surgery, and the next year Lung Cancer. Our budget became unmanageable. I had to find part time work to pay for the expensive medication that wasn't covered by insurance. He could no longer help with maintenance or yard work, and we could not afford to hire anyone to assist us.

Therefore, we could not manager our bills. Our home was going into foreclosure. I called the mortgage company to get permission to sell the house. I called Century 21, who tried to sell the house for three months. When the house didn't sell, we decided to respond to the many flyers we received from Pamela Johnson.

Pamela assured us that she would sell the house. She requested that we give her Power of Attorney to sell the house. We agreed to go to the Bank to sign in the presence of a Notary. We didn't hear from Pamela about the sale of the house. A neighbor called to tell me our house had been sold, and the lady was moving in.

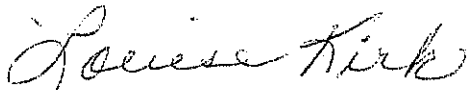
Century 21 had assured us that we had money coming from the sale of the house. I called Pamela to see if she sold the house and to ask if we had money coming. I was told that there was only enough money for her fee. My husband was devastated that we didn't have money coming from the sale.

Two years later, after the death of my husband, the State of Wisconsin Department of Justice came to my door to confirm that, Pamela Johnson was the person that sold our

house. That was when I found out that she had received a Hefty sum for the sale. That information landed me in the Hospital with a bowel obstruction. My nerves were shattered with the death of my husband, but the fact that there was money taken from me, took me over the edge.

I was advised to contact Legal Aid Society of Milwaukee to represent me with this matter. My sincere desire is that this does not happen to anyone else. Please pass the Bill that would protect others from experiencing what I have gone through.

Thank you,

A handwritten signature in cursive script that reads "Louise Kirk". The ink is dark and the signature is fluid.

Mrs. Louise Kirk



The Wisconsin Partnership
for Housing Development, Inc.

STATEMENT BY
WILLIAM C. PERKINS
EXECUTIVE DIRECTOR
THE WISCONSIN PARTNERSHIP FOR HOUSING DEVELOPMENT, INC.

ON SENATE BILL 298
SENATE COMMITTEE ON VETERANS AND MILITARY AFFAIRS,
BIOTECHNOLOGY AND FINANCIAL INSTITUTIONS

NOVEMBER 13, 2007

Good afternoon. My name is Bill Perkins, and I am Executive Director of The Wisconsin Partnership for Housing Development. The Partnership is a nonprofit corporation created at the initiative of Governor Tony Earl in 1985 to expand access to affordable housing opportunities and revitalizes neighborhoods through partnerships among the public, nonprofit and private sectors. The Partnership develops or co-develops housing; designs and manages financing programs; provides consulting services to nonprofit and for-profit developers and state, regional and local governments; and advocates for increased resources for affordable housing and neighborhood revitalization.

We have managed down payment assistance programs that have provided \$17.5 million in down payment assistance to help more than 4,100 low and moderate income Wisconsin households buy homes. We have also provided funding for counseling to over 7,000 home buyers and over 400 renters.

I appear before the committee today to express my enthusiastic support for Senate Bill 298, which would create badly-needed regulation of parties engaging in what have become known colloquially as "foreclosure rescue scams." We are all familiar with the alarming increase in foreclosures resulting partly from predatory and irresponsible subprime lending. Home owners, lenders, the rest of the home mortgage market and the larger financial system have been badly damaged by the extraordinarily high rate of foreclosures.

Many home buyers—particularly low and moderate income home buyers—and home owners have been victimized by mortgage loans that ignored prudent underwriting standards. To add insult to injury, many home owners are also being victimized by unscrupulous people representing themselves as resources who will help the owners avoid loss of their home, whose real motivation is to strip the owners of their equity and gain control of their assets for financial gain. There are legitimate sources of help for

home owners in trouble. Many nonprofit organizations, public agencies and responsible lending institutions are trying to respond to the foreclosure crisis. Home owners facing foreclosure want and need help. That makes it all the worse for vulnerable home owners to fall prey to foreclosure rescue scams.

Although irresponsible subprime and predatory loans have especially impacted lower income borrowers in Milwaukee and other cities, the problem is statewide. Recently, we heard from Independent Living in Madison, a nonprofit organization that provides in-home services to the elderly. One of the agency's clients, who has serious financial problems and has fallen behind on her mortgage payments, reported that she had recently been contacted on the phone by someone claiming to work for a company specializing in helping people facing foreclosure. The caller told the elderly client that the company could solve her potential foreclosure problems and asked her to send them \$5,000 in a "Money Gram" as well as a copy of her bank statement. If the client had not been able to get help from a legitimate counselor, she might have lost her home and her savings.

Earlier this year, we heard from Neighborhood Housing Services of Richland County about predatory lenders targeting borrowers in that predominantly rural county. Where predatory lenders find business, foreclosure rescue scams aren't far behind.

I urge the committee to act quickly on Senate Bill 298 so that the most vulnerable home owners across Wisconsin can be better protected from financial disaster.



Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Paul Vornholt
Director of Intergovernmental Relations

Senate Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions
November 13, 2007

Testimony on Senate Bill 298:

Regulating foreclosure reconveyances and foreclosure consultants, staying certain eviction actions, providing an exemption from rule-making procedures, and providing a penalty.

Thank you Chairman Sullivan and committee members for the opportunity to testify on the behalf of the City of Milwaukee today. I would like to express our emphatic support for Senate Bill 298 and express our appreciation to Senator Sullivan, Representative Richards and the other cosponsors for supporting this change in state law.

Aside from a good job, one of the most tried and true ways to build wealth is home ownership. With rapidly rising property values in the past several years, many residents in our community finally have a net worth and it is located in the equity of their home.

Unfortunately many of these same people encounter periods of financial distress – maybe a large healthcare bill or a job loss, and they fall behind on their house payments. Someone representing themselves as a savior appears on their doorstep offering to help, probably after getting their name from a publicly filed list of foreclosure actions. Often the homeowner lacks the legal savvy to understand the terms of the “rescue” and ends up stripped of their equity and evicted from their home.

In Milwaukee, we have numerous community organizations working with residents to create financial stability and the opportunity to improve their lives. The City itself has invested millions of dollars in resources into our neighborhoods to improve our housing stock. In fact we have thousands of people trying to build a healthy community being set back by a rotten few who are preying on those who are down on their luck. This has to stop.

Foreclosures ruin neighborhoods by creating homelessness, reducing property values, increasing city costs to monitor board-ups, vandalism, drug sales and other criminal behavior as well as increasing fire risks. Because of the serious nature of these problems and cost to local taxpayers, the City of Milwaukee has been an active partner in efforts to avoid these consequences.

This won't be the last piece of legislation that tries to prevent the fallout from an escalating number of foreclosures we are seeing in Wisconsin. The scam this legislation intends to end is the most egregious in a despicable web of greedy partners who have fed on borrowers to create the national subprime lending crisis. Future state and federal efforts coming from our group will include tightening regulations on mortgage brokers, requiring certification of property appraisers and strengthening truth-in-lending requirements.

Just as Wisconsin is not unique in the nation, Milwaukee is not the only community in the state that has homeowners facing foreclosure and where predators are taking advantage of their misfortune. News reports indicate that other large cities in the US are experiencing this same problem and that many of them have passed similar laws to put these scam artists out of business. We urge you to do the same for Wisconsin residents. Thank you for your consideration of this important legislation.

For more information, please contact:

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(414) 286-3492 or jgonda@milwaukee.gov



State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

Testimony of
Michael J. Mach, Administrator
Department of Financial Institutions – Division of Banking
Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions
Senate Bill 298
November 13, 2007

Chairman Sullivan and member of the committee thank you for this opportunity to testify on Senate Bill 298. I commend your efforts for addressing this important issue.

I would like to address a few concerns that DFI noted when we reviewed the bill. Most of our concerns relate to the definition of a foreclosure consultant.

The activities described on Page 17, lines 15 through 19, are activities that would require the foreclosure consultant to be licensed as an adjustment service company under the provisions of section 218.02, Stats. DFI has in fact pursued persons acting as foreclosure advisors for unlicensed adjustment service company act. We don't necessarily see the fact that a foreclosure consultant would have to be licensed as an adjustment service company as a problem, however there is conflict between SB 298 and current law that would need to be reconciled. Most of these conflicts relate to the how and when fees are paid.

The activities described on Page 17, on line 20, are activities that would require a foreclosure consultant to be licensed as a mortgage broker, however on Page 18 on lines 24 and 25 mortgage brokers are exempted from the definition of a foreclosure consultant, which appears to create a conflict.

Our other major concern relates to jurisdictional issues. It would seem clear to us that the provisions of the bill would apply to a Wisconsin resident if the property is located in Wisconsin. It is not clear if the provisions of the bill would apply to a Wisconsin resident if the property is located out-of-state.

Finally, we do have some questions if the references in the bill to the federal Truth-in-Lending act may actually apply to the transactions contemplated by SB 298 and we have some suggestions relating to improving the right to cancel, based on our experience administering the Wisconsin Consumer Act.

I have attached a more detailed discussion on each topic for your review.

Thank you for your consideration.

Division of Banking

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Concerns Relating to Senate Bill 298

MAJOR CONCERNS:

1. Most of the services (page 19) done by a foreclosure consultant ("FC") would make the FC an adjustment service company under s. 218.02. Also, it is possible that a licensed adjustment service company who primarily provides debt, budget, or financial consulting for non-real estate transactions would be considered a foreclosure consultant subject to the provisions of 846.45. It would be difficult for an entity to comply with the laws applicable to both a foreclosure consultant and an adjustment service company because there would be conflicts between the provisions of 846.45, Section 218.02, and Rule DFI-Bkg 73.
2. Do we want to exempt loan originators and mortgage brokers from the FC portion of this bill?
3. We need clarification regarding who is covered by this law. Is it anyone who works with a Wisconsin resident? Does it matter if the real property is not located in Wisconsin?

OTHER CONCERNS:

4. In Section 4 on page 6, the provisions of 846.40(2) require that the contract be written in the same language principally used by the foreclosure purchaser and the foreclosed homeowner to negotiate the sale of residence in foreclosure. Similar wording also is in 846.45(3)(c), which pertains to the contract of a foreclosure consultant. It is recommended that the contracts be in English plus the language principally used to negotiate the contract with the foreclosed homeowner. See the wording in Section 423.203(2), Wisconsin Statutes.

5. In Section 4 on page 8, the provisions of 846.40(4)(b) include the sentence "Cancellation occurs when the foreclosed homeowner delivers by any means, a signed and dated written notice of cancellation." As it is unclear who the cancellation notice could be given to, it is recommended that this sentence be revised to "Cancellation occurs when the foreclosed homeowner delivers by any means to the foreclosure purchaser, a signed and dated written notice of cancellation."

6. In Section 4 on page 11, the provisions of 846.40(8)(a)4 require the foreclosure purchaser to comply with the requirements of 12 CFR 226.31, 226.32, and 226.34. It is unclear what this means because 226.32(a)(2)(i) does not apply to a "residential mortgage transaction," which includes a transaction where a mortgage is being created in connection with the acquisition of a dwelling. Does this mean that if a mortgage is created by the foreclosure purchaser, the requirements of 226.32 do not apply?

Also, there is the concern that 226.32(d)(1)(i) prohibits a "balloon payment" on a loan with a term of less than five years. Would a land contract be considered a loan? If yes, then any agreement to allow a foreclosed homeowner to buy the dwelling back within five years, by making a balloon payment at the time of repurchase would be prohibited. It is our understanding that currently many agreements involving foreclosure purchasers are for a term of less than five years.

	foreclosure consultant	ASC
contract	3 day right to cancel	no right to cancel
fees	cannot collect money until finished providing services	can collect money throughout term of DMP
fees	no maximum fee	fees capped
loans	allows FC to make loan to debtor and charge up to 8% interest	prohibits making a loan unless no fee is charged
fees	ASC fee structure may result in only \$50 earned unless creditors are paid and are willing to contribute up to 15% to FC	Fee structure is based on monthly debtor payments
wage assignment	prohibited	allowed, if debtor requests and is for debtor's convenience